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7 TEVRA BRANDS LLC,
8 Plaintiff,
9 v.
10 BAYER HEALTHCARE LLC, et al.,
11 Defendants.

Case No. 19-cv-04312-BLF

**ORDER GRANTING IN PART AND
DENYING IN PART
ADMINISTRATIVE MOTION TO
SEAL**

[Re: ECF No. 350]

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13 Before the court is the parties' Joint Administrative Motion to File Under Seal Portions of
14 the April 30, 2024 Daubert Order. ECF No. 350; *see also* ECF No. 351. For the reasons
15 described below, the administrative motion is GRANTED IN PART AND DENIED IN PART.

16 **I. LEGAL STANDARD**

17 "Historically, courts have recognized a 'general right to inspect and copy public records
18 and documents, including judicial records and documents.'" *Kamakana v. City & Cty. Of
19 Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc'nns, Inc.*, 435
20 U.S. 589, 597 & n.7 (1978)). Accordingly, when considering a sealing request, "a 'strong
21 presumption in favor of access' is the starting point." *Id.* (quoting *Foltz v. State Farm Mut. Auto.
22 Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). Parties seeking to seal judicial records relating to
23 motions that are "more than tangentially related to the underlying cause of action" bear the burden
24 of overcoming the presumption with "compelling reasons" that outweigh the general history of
25 access and the public policies favoring disclosure. *Ctr. for Auto Safety v. Chrysler Grp.*, 809 F.3d
26 1092, 1099 (9th Cir. 2016); *Kamakana*, 447 F.3d at 1178–79.

27 Records attached to motions that are "not related, or only tangentially related, to the merits
28 of a case," however, are not subject to the strong presumption of access. *Ctr. for Auto Safety*, 809

1 F.3d at 1099; *see also Kamakana*, 447 F.3d at 1179 (“[T]he public has less of a need for access to
2 court records attached only to non-dispositive motions because those documents are often
3 unrelated, or only tangentially related, to the underlying cause of action.”). Parties moving to seal
4 the documents attached to such motions must meet the lower “good cause” standard of Rule
5 26(c). *Kamakana*, 447 F.3d at 1179 (internal quotations and citations omitted). This standard
6 requires a “particularized showing,” *id.*, that “specific prejudice or harm will result” if the
7 information is disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,
8 1210–11 (9th Cir. 2002); *see* Fed. R. Civ. P. 26(c). “Broad allegations of harm, unsubstantiated
9 by specific examples of articulated reasoning” will not suffice. *Beckman Indus., Inc. v. Int'l Ins.*
10 *Co.*, 966 F.2d 470, 476 (9th Cir. 1992).

11 **II. DISCUSSION**

12 Tevra seeks to seal selected portions of the *Daubert* order. ECF No. 350. Tevra writes
13 that the information should be sealed because “retailers would have insight into confidential
14 retailer communications and Tevra’s business concerns, which could influence their decisions in
15 choosing another brand over Tevra, altering order quantity, or using those concerns in contract
16 negotiations.” *Id.* at 3. Tevra argues that the portions are narrowly tailored. *Id.*

17 Bayer also seeks to seal selected portions of the *Daubert* order. *Id.* Bayer writes that the
18 information should be sealed because “these portions of the Order contain highly confidential,
19 sensitive business information of Bayer HealthCare LLC relating to its internal business strategies,
20 including competitively sensitive information regarding Bayer’s retailer and licensing agreements
21 and customers.” *Id.* at 3. Bayer argues that the portions are narrowly tailored. *Id.* at 4.

22 The Court finds that compelling reasons exist to seal some of the highlighted portions of
23 the document, except as noted in the table below. *See Finjan, Inc. v. Proofpoint, Inc.*, No. 13-CV-
24 05808-HSG, 2016 WL 7911651, at *1 (N.D. Cal. Apr. 6, 2016) (finding “technical operation of
25 [defendant’s] products” sealable under “compelling reasons” standard); *Exeltis USA Inc. v. First*
26 *Databank, Inc.*, No. 17-CV-04810-HSG, 2020 WL 2838812, at *1 (N.D. Cal. June 1, 2020)
27 (noting that courts have found “confidential business information” in the form of “business
28 strategies” sealable under the compelling reasons standard.). The Court also finds that the request

1 is narrowly tailored, except as noted in the table below.

2 The Court's ruling is summarized below:

3 Document	4 Portion(s) to Seal	5 Ruling
	6 Highlighted portions at 2:2.	7 DENIED , as this information is already 8 public. <i>See</i> ECF No. 164 at 18:26.
9	10 Highlighted portions at 11 12:18-20	12 DENIED , as Tevra has not explained what 13 makes the content of the communications 14 confidential. <i>See</i> ECF No. 333 at 3 (denying a 15 similar request "as overly broad and because 16 Bayer has not described why information such 17 as the content of emails to distributors is 18 confidential.").
19	20 Highlighted portions at 21 12:22.	22 GRANTED , as previously sealed for the 23 reasons described in ECF No. 321 at 8; ECF 24 No. 348 at 4.
25	26 Highlighted portions at 27 11:27.	28 DENIED , as this information is already 29 public. <i>See</i> ECF No. 302-2 ¶ 129 n.167; https://www.spglobal.com/marketintelligence/en/news-insights/trending/KyWQrTBG1VOgJMvPgXuKIA2
30	31 Highlighted portions at 13:5.	32 GRANTED , as it contains competitively 33 sensitive information regarding the identity of 34 customers with whom Bayer contracts. <i>See</i> 35 ECF No. 351.

19 **III. ORDER**

20 For the foregoing reasons, IT IS HEREBY ORDERED that the administrative motion is
21 GRANTED IN PART AND DENIED IN PART. All denials are WITHOUT PREJUDICE. Any
22 refiled administrative motion SHALL be filed no later than **May 14, 2024**.

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24 Dated: May 7, 2024

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26 
27 BETH LABSON FREEMAN
28 United States District Judge